

REMARKS

Claims 12 and 13 are currently pending. Claim 12 has been amended. Support for this amendment is found in the specification at page 6, lines 1-12 of the specification. The arguments and amendments presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),¹ and without waiving the right to prosecute the cancelled claims (or similar claims) in the future.

The following objections and rejections are at issue and are set forth by number in the order in which they are addressed:

1. The Examiner objects to the priority claim;
2. The Examiner objects to the specification;
3. Claim 12 is rejected under 35 U.S.C. §112, second paragraph, as lacking a sufficient antecedent basis;
4. Claims 12 and 13 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Sebedio et al., Lipids 34(12):1319-25 (1999);
5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 9718320 (Cain) in view of Adolf, Lipids 36(3):315-17 (2001);
6. Claims 12 and 13 are reected for obviousness-type double patenting over U.S. Pat. No. 7,029,691.

¹ 65 Fed. Reg. 54603 (Sept., 8, 2000).

1. The priority claim is proper

The Examiner argues that Applicants are not entitled to priority for the claimed subject matter because the Applicants were not in possession of the claimed invention on the filing date. In particular, the Examiner states that none of the applications disclose a content of 8,10 and 1,13 octadecadienoic acids isomers of less than 2% in the aggregate. Applicants respectfully disagree. The current application specifically discloses that the compositions preferably comprise less than 1% of the 8,10 isomer and less than 1% of the 11,13 isomer and provides detailed methods for obtaining such compositions. The Specification, at p. 6, lines 1-13, provides the following:

In the present composition, a high percentage of linoleic acid or its corresponding ester are converted primarily to the conjugated c9,t11 and t10,c12 isomers in a carefully controlled reaction yielding greater than 90 percent of these isomers, so that less than a combined 1 percent of the 11,13 isomers, less than 1 percent of the 8,10 isomers, less than 1 percent of the double trans species (the t9,t11 and t10,t12 isomers), and less than 1 percent total unidentified linoleic acid species, in the aggregate less than five percent, is present in contrast to conventional compositions. In many individual product runs, the final composition has levels of these species virtually undetectable by GC analysis. The 1 percent limit in concentration of the 11,13 and 8,10 isomers serves as a convenient and practical quality assurance standard of purity for a commercial scale manufactured food grade product.

For the sake of clarity, Applicants have amended the claims to specify that the compositions comprise less than 1% of the 8,10 and less than 1% of the 11,13 isomers as specifically taught in the specification. Accordingly, Applicants respectfully request that the Examiner examine the application taking into consideration the correct priority date.

2. The objection to the specification is improper.

The Examiner objects to the specification as failing to provide proper antecedent basis for the claimed subject matter. As explained in the preceding section, the specification does contain support for the limitation of less than 1% 8,10 isomer and less than 1% 11,13 isomer at p. 6, lines 1-13. Accordingly, this objection should be withdrawn.

3. Claim 12 has sufficient antecedent basis.

For the sake of clarity, Applicants have amended the claims to specify a composition containing less than 1% of the 8,10 isomer and less than 1% of the 11,13 isomer. Accordingly, this rejection is moot and should be withdrawn.

4. Claims 12 and 13 are not anticipated by Sebedio.

Claims 12 and 13 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Sebedio et al., Lipids 34(12):1319-25 (1999). Sebedio is not a proper anticipating reference as it was published after the priority date of the instant application. As established above, the claims have proper priority to at least 9/25/1998, well before the 1999 publication date of Sebedio. Accordingly, this rejection should be withdrawn.

5. Claims 12 and 13 are patentable over Cain and Adolf.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 9718320 (Cain) in view of Adolf, Lipids 36(3):315-17 (2001). The Examiner admits that Cain does not teach compositions comprising less than 1% of the 8,10 isomer and less than 1% of the 11,13 isomer. Adolf is not a proper 103 reference as it was published well after the established 9/25/1998 priority date (Applicants note that the true priority date is earlier) of the present claims. Accordingly, this rejection should be withdrawn.

6. Double patenting.

Claims 12 and 13 are rejected for obviousness-type double patenting over U.S. Pat. No. 7,029,691. Upon resolution of the other objections and rejections, Applicants will submit a terminal disclaimer over this reference.

CONCLUSION

All grounds of rejection and objection of the Office Action of June 4, 2007 having been addressed, reconsideration of the application is respectfully requested. It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

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